

Serial No. 10/816,288

PATENT

REMARKS

In the Office action of December 23, 200, Paper No. 12212005, claims 1-18 were rejected.

In particular, claims 1 to 5, 11, 13, 14 and 15 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4634420 (Spinosa). Claims 6, 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of US Patent 5160319 (Emery). Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of Emery and further in view of US Patent 6273877 (West). Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of US Patent 6018676 (Davis). Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of US Patent 5533986 (Mottola). Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of US Patent 3561596 (Knox). Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of Emery and further in view of Davis.

Amendments have been made to cancel claims 1 and 2.

The reference Spinosa discloses an apparatus and method for the removal of tissue from an animal and the particular example is for removal of unwanted organic tissue in the eye. The instrument includes a needle (14) in Figure 1 which is surrounded by a sheath (42). The needle is vibrated by an ultrasonic generator in a handle of the device and aspiration occurs through the needle.

Serial No. 10/816,288

PATENT

This construction is quite different than the construction of the aspiration and flushing needle assembly of the present invention because the present invention uses an outer needle and an internal aspiration cannula which extends through the lumen of the outer needle to the distal end of the outer needle.

It is further noted in Spinosa that the needle 14 has a base 56 which is permanently connected into housing 41 by the lugs 47 in the housing fitting into the groove in the base 56. Although the device is shown in an exploded view in Figure 1, it is clearly not intended that the two components, the housing 41 and sheath 42 and the needle assembly 12 be supplied as separate components to the physician to be connected. There is no connection arrangement shown or taught in Spinosa by which a user and particularly a user wearing surgical gloves in a operating theatre, could connect the two components. They are supplied connected. As discussed on page 7 lines 19 to 24 of the present application, it is advantageous to supply the aspiration assembly in a dissembled state so that a surgeon or physician can be satisfied that all the components are clean and ready to use before assembling them. This is clearly not possible in Spinosa as the needle would be supplied in the assembly as shown in Figure 2.

With respect, we disagree with the Examiner's statement in paragraph 3 of the Detailed Action that Spinosa discloses an outer needle 42. The component nominated as 42 is an outer sheath extending over an inner needle. The sheath does not extend to the end of the needle, is not disclosed or taught as having a needle tip and cannot be considered to be a needle. For these reasons, we submit

Serial No. 10/816,288

PATENT

that claim 3 is not anticipated by Spinosa. Claim 3 specifically requires an outer needle and a inner aspiration cannula and that the two components are separable. Spinosa does not have these features.

Similarly, we submit that independent claims 4 and 18 which each includes all of the limitations of an outer needle and a separable needle and aspiration assembly are also not anticipated by Spinosa.

Claims 5, 11, 13, 14 and 15 are also rejected as being anticipated by Spinosa but as these claims all depend from a novel claim 4 as discussed above, we submit that these claims, too, are novel and not anticipated by Spinosa.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of Emery and further in view of West but as this claim 7 depends from a novel and not anticipated claim 4 as discussed above, we submit that this claim, too, is patentable.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of Davis but as this claim depends from a novel and not anticipated claim 4 as discussed above, we submit that this claim, too, is patentable.

Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of Mottola but as this claim 12 depends from a novel and not anticipated claim 4 as discussed above, we submit that this claim, too, is patentable.

Serial No. 10/816,288

PATENT

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of Knox but as these claims 16 and 17 depend from a novel and not anticipated claim 4 as discussed above, we submit that these claims, too, are patentable.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spinosa in view of Emery and further in view of Davis but as this claim 18 depend from a novel and not anticipated claim 4 as discussed above, we submit that this claim, too, is patentable.

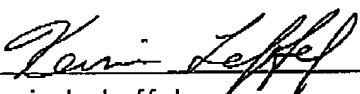
The reexamination and reconsideration of this application is respectfully requested, and it is further requested that the application be passed to issue.

Although the foregoing discussion is believed to be dispositive of the issues in this case, applicants' attorney requests a telephone interview with the Examiner to further discuss any unresolved issues remaining after the Examiner's consideration of this amendment.

Respectfully submitted,

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